

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Charis Jones	Team: Squad #4	CCRB Case #: 202003726	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 05/29/2020 9:07 PM	Location of Incident: In front of the 88th Precinct stationhouse on Dekalb Avenue and Classon Avenue	Precinct: 88	18 Mo. SOL 11/29/2021	EO SOL 5/4/2022	
Date/Time CV Reported Mon, 06/01/2020 9:51 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 06/01/2020 9:51 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. CPT William Gallagher	00000	925327	CPK PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Discourtesy: An officer spoke discourteously to individuals.	
B.CPT William Gallagher	Force: Captain William Gallagher struck individuals with a police shield.	
C.CPT William Gallagher	Force: Captain William Gallagher used physical force against individuals.	
D.CPT William Gallagher	Abuse: Captain William Gallagher interfered with individuals's use of a recording device.	
E.CPT William Gallagher	Discourtesy: Captain William Gallagher spoke discourteously to § 87(2)(b) and individuals.	
F.CPT William Gallagher	Force: Captain William Gallagher used physical force against § 87(2)(b)	

Case Summary

On June 1, 2020, § 87(2)(b) filed this complaint on the CCRB's call processing system.

This case was reviewed by Panel 2A-2021 on April 23, 2021. On July 23, 2021, Attorney Louis La Pietra, from La Pietra & Krieger, P.C. requested to have this case reopened. Mr. La Pietra provided a video recording (Board Review 18) and asked that the investigation reconsider their disposition for Allegation B. This is the same video recording Mr. LaPietra presented to the investigation during Captain Gallagher's CCRB interview on July 24, 2020.

On May 29, 2020, at approximately 9:07 p.m., § 87(2)(b) and other unidentified individuals participated in a protest against police brutality in front of the 88th Precinct stationhouse in Brooklyn. An unidentified officer told civilians to "get the fuck back" (**Allegation A: Discourtesy, § 87(2)(g)**).

Captain William Gallagher, from the Central Park Precinct, oversaw officers strike civilians with police shields (**Allegation B: Force, § 87(2)(g)**). Capt. Gallagher pushed civilians' arms while they attempted to film (**Allegation C: Force, § 87(2)(g)**) (**Allegation D: Abuse of Authority, § 87(2)(b)**). Capt. Gallagher told § 87(2)(b) and civilians, "Get the fuck back" and "Are you fucking kidding me?!" (**Allegation E: Discourtesy, § 87(2)(g)**). Capt. Gallagher pushed § 87(2)(b) against the fence of the 88th Precinct stationhouse (**Allegation F: Force, § 87(2)(g)**).

§ 87(2)(b) was not arrested or summonsed as a result of this incident. § 87(2)(b) provided cell phone videos which captured a portion of this incident (Board Review 01, 02, 11). The investigation obtained Capt. Gallagher's BWC which also captured a portion of this incident (Board Review 03). Capt. Gallagher provided the investigation with a cellphone video he obtained which captured a portion of this incident as well (Board Review 04).

Findings and Recommendations

Allegation (A) Discourtesy: An officer spoke discourteously to individuals.

Allegation (B) Force: Captain William Gallagher struck individuals with a police shield.

§ 87(2)(b) (Board Review 05) testified that he observed a line of approximately six uniformed officers standing in the middle of Dekalb Avenue holding shields. § 87(2)(b) moved closer to the front of the crowd in order to film the officers. An unidentified officer, who was the last officer on the right side of the line, ordered civilians, "Get back, get back, get the fuck back, get the fuck back." The same officer then lifted his shield up and struck protesters in front of him on the heads. § 87(2)(b) described the unidentified officer as a Black male who stood approximately 6'1" tall, wore an NYPD baseball hat and uniform, goggles, and had a mask around his chin.

§ 87(2)(b) recorded a cellphone video which captured this portion of the incident (Board Review 02). Throughout the video, protestors repeatedly chant, "Hands up, don't shoot." There are multiple officers, including Capt. Gallagher, standing around. There are at least three other unidentified white shirt male officers standing in the area around and behind Capt. Gallagher. Capt. Gallagher appears closest to the video. From 00:00 to 00:01, at the bottom center of the screen, an unidentified object moves from somewhere behind and above the camera angle towards officers. From 00:03 to 00:10, some of the uniformed officers move forward towards the line of protestors. At 00:09, Capt. Gallagher and a white shirt officer on the left (light-skinned male, bald, and taller than Capt. Gallagher) turn around and wave for officers behind them to move forward. Additional officers move forward with their police shields as Capt. Gallagher organizes them in a line. At 00:22, unidentified uniformed officers hold their shields in front of them and tell protestors to get back. The protestors visible in the camera angle are standing with their hands straight upward. The protestors do not retreat, continue to stand in front of the officers, and chant, "Hands up, don't shoot." At 00:28, the officers push their shields into the group of protestors. At 00:29, someone is heard saying, "Get the fuck back." § 87(2)(b) yells, "What the fuck!" § 87(2)(b)'s camera becomes blurry and he continues to yell, "What the fuck?" The video ends abruptly at 00:44 seconds.

Capt. Gallagher (Board Review 06, 07, 08) was shown § 87(2)(b)'s video mentioned above. Capt. Gallagher did not recall if he instructed the officers to move forward into the crowd at that time and

believed that he had been pointing to an area behind him where bottles had just been thrown. The protesters threw bricks, water bottles filled with concrete, and on more than one occasion they threw a Molotov cocktail. The officers present continued to push the protesters away from the stationhouse with their hands and shields. Capt. Gallagher, along with other officers, ordered the protesters to get back multiple times. Capt. Gallagher's objective was to clear people out of the street and get them away from the stationhouse. Capt. Gallagher did not know whether the officers' use of the police shield was a standard tactic. However, Capt. Gallagher believed the police shield was used to defend oneself and that, in a "riot" condition, it could be used to push people back. Capt. Gallagher has not received specialized or general training on the use of shield.

Regarding the video that Mr. La Pietra provided, Capt. Gallagher stated that he did not recall the source of the video other than that it was an internet video. The video is not time stamped. Capt. Gallagher stated that this video referenced Allegation B. The video (Board Review 18) shows what appears to be a lit Molotov cocktail being thrown into a group of officers at the 00:31 second mark. The group of officers are lined up next to each other in the street within a 4-way intersection. Capt. Gallagher added that he was standing in the line of officers when that specific Molotov cocktail depicted was thrown. When asked how Capt. Gallagher knew that, CEA Representative Louis La Pietra stated, "Your view of that video indicates to you that that's where you were at the time in question." Capt. Gallagher agreed with Mr. La Pietra's statement.

The investigation obtained detailed rosters for protests on May 29, 2020 (Board Review 15). The roster revealed that approximately 59 supervisors and 472 uniformed officers were deployed to various parts of Brooklyn on May 29, 2020. The roster did not list any specific officer as being assigned to the incident location.

The investigation was unable to identify the specific officers that used their police shields against protestors or the additional supervising officers present at the scene. However, video footage shows Capt. Gallagher waving for the officers behind him to move forward and then organizing them in a line. Thus, Allegation B was pleaded against him.

NYPD Patrol Guide Procedure 221-01 states that officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise to protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. Officers will only use the reasonable force necessary to gain control of a subject while considering a number of factors including, but not limited to, actions taken by the subject; immediacy of the perceived threat or harm to individuals; and the presence of a hostile crowd. When appropriate and safe to do so, officers are required to use de-escalation techniques, such as issuing verbal commands, to safely gain voluntary compliance of a subject in order to reduce or eliminate the necessity of force (Board Review 09).

NYPD Patrol Guide Procedure 221-02 states that officers must advise the offender that physical force or other devices (e.g., O.C. pepper spray, shield, baton/asp, etc.) will be used to handcuff restrain him/her before applying such force, if appropriate.

§ 87(2)(g)

It is undisputed that officers used their police shields against protesters. § 87(2)(b) provided video evidence that shows that the protestors directly at the front of the line and affected by the pushes were standing with their arms up at the time of the officers' use of force. However, Capt. Gallagher testified that protesters threw bricks, water bottles filled with concrete, and Molotov cocktails at officers. Capt. Gallagher also provided video evidence of an instance in which a Molotov cocktail was thrown at officers and stated that he was at the front of the line telling

officers to push the crowd back thereafter. The investigation was unable to determine if this video was from the same incident date or location or even if Captain Gallagher was pictured in the video. The investigation did determine that this video did not capture Allegation B, as it showed a four-way intersection with a noticeably different background than the scene captured in § 87(2)(b)'s cell phone video. However, the investigation was not able to determine whether this Molotov cocktail was thrown at officers prior to Captain Gallagher waving them forward.

§ 87(2)(g)

Allegation (C) Force: Captain William Gallagher used physical force against individuals.
Allegation (D) Abuse of Authority: Captain William Gallagher interfered with individuals' use of a recording device.

§ 87(2)(b) took a cell phone video, which captured the above allegations (Board Review 01). This video captures a line of protesters standing in front of a line of uniformed officers. The protesters chant, "Hands up! Don't shoot!" At 00: 17, Capt. Gallagher is captured standing behind the uniformed officers. At 00:38, the line of officers, including Capt. Gallagher, move towards the crowd of protesters. Officers yell, "Get back!" From 01: 16 to 01 :30, Capt. Gallagher pushes the arm of an unidentified male who has his phone near Capt. Gallagher's face (left side of the frame) and is filming him. At 01 :31, another unidentified male attempts to film Capt. Gallagher. Capt. Gallagher pushes that man's arm away as well.

§ 87(2)(b)'s (Board Review 05) testimony is generally consistent with the video he provided, with the exception of Capt. Gallagher's interaction with the first unidentified male. § 87(2)(b) observed the second unidentified male film the protest with his phone approximately four feet in front of § 87(2)(b). Capt. Gallagher pushed through the crowd and approached the man. Capt. Gallagher pushed the man's forearm down with both hands so that he could not film the protest. § 87(2)(b) told Capt. Gallagher to stop pushing the cameras out of the way because they were going to film what the officers were doing.

Capt. Gallagher (Board Review 06, 07, 08) did not initially recall the above allegations. However, after reviewing the cell phone video mentioned above, Capt. Gallagher acknowledged that he pushed away the individuals' arms. Capt. Gallagher stated that if an individual puts their hand close to his face, whether they were holding a recording device or not, he would push their hand away for safety reasons.

NYPD Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise to protect life, or when it is reasonable to place a person in custody or to prevent escape from custody (Board Review 09).

NYPD Patrol Guide 203-29 states that individuals have a right to lawfully observe and/or record police activity. This right to observe and/or record police action can be limited for reasons such as the safety of officers or other members of the public (Board Review 15).

§ 87(2)(g)

Allegation (E) Discourtesy: Captain William Gallagher spoke discourteously to § 87(2)(b) and individuals.

The above allegations were captured in Capt. Gallagher's BWC recording and were not alleged by § 87(2)(b)

Capt. Gallagher's BWC, from 02:27 to 02:45, shows protesters standing and chanting in front of a line of uniformed officers. Capt. Gallagher yells, "Get back, get back, get back, get the fuck back!" Capt. Gallagher says to a protester, "Get out of my fucking ... get away from me." From 02:47 to 02:57, Capt. Gallagher says, "Keep going. Get out of my ... get out of the way!" From 03:49 to the end, § 87(2)(b) yells, "Fucking trash!" Capt. Gallagher yells, "Are you fucking kidding me?!" Capt. Gallagher runs in the direction of § 87(2)(b)'s voice. § 87(2)(b) yells, "Fuck you!" The footage then abruptly ends.

Capt. Gallagher (Board Review 06) testified that he did not recall making those statements. After he reviewed his BWC recording, Capt. Gallagher remained that he did not make the statements above.

DAO-DCT Case Command:550/Case Number: 2017-17005 states that profane remarks, made during situations or while an officer is trying to get a chaotic situation under control, are not misconduct (Board Review 10).

§ 87(2)(g)

Allegation (F) Force: Captain William Gallagher used physical force against § 87(2)(b)

§ 87(2)(b) (Board Review 05) testified that he threw a cardboard sign at Capt. Gallagher after § 87(2)(b) observed Capt. Gallagher push away the individuals that were recording him. Capt. Gallagher looked at § 87(2)(b) and ran towards him. § 87(2)(b) turned around and ran on the sidewalk towards the fence of the 88th Precinct stationhouse. Capt. Gallagher ran after § 87(2)(b) and pushed him against the fence. Protestors yelled, "Let him go." Capt. Gallagher spread both arms and used the leverage of his chest and his back to keep § 87(2)(b) against the fence. § 87(2)(b) screamed, "Get the fuck off of me" multiple times. Protesters approached Capt. Gallagher and § 87(2)(b) was able to escape from beneath him.

Capt. Gallagher (Board Review 06, 07, 08) testified that he saw § 87(2)(b) throw something in his direction. Capt. Gallagher went to arrest § 87(2)(b) for assault in the second degree, reckless endangerment, rioting, unlawful assembly, disorderly conduct, and criminal possession of a weapon. Capt. Gallagher did not recall how he restrained § 87(2)(b) but stated that, at one point, he "had" § 87(2)(b). Capt. Gallagher attempted to place § 87(2)(b) under arrest and he was surrounded by protesters. Capt. Gallagher extended his asp and ordered the protesters to get back as they moved closer to him. At the same time, an unidentified individual threw a brick at Capt. Gallagher, which hit the left side of his face and neck area. Capt. Gallagher was shocked and leaned forward. As a result, § 87(2)(b) was able to run away and avoid being arrested.

§ 87(2)(b) provided a video, which captured this portion of the incident (Board Review 11). The video captures the right side of Capt. Gallagher's face as § 87(2)(b) extends his right arm out to film. § 87(2)(b) screams, "Get the fuck off me! Get the fuck off me! Help! Help!" Protesters gather around Capt. Gallagher, who is in front of § 87(2)(b). From 00:11 to 00:33 (the end of the video), a loud thud is heard, and § 87(2)(b) says, "Move, Move, get out of here." § 87(2)(b)'s camera suddenly becomes blurry and unclear. It appears § 87(2)(b) runs away.

Capt. Gallagher also provided a cellphone recording of a video that he obtained online. He did not know the source of video. The video captured this portion of the incident from a different perspective (Board Review 04). The video shows Capt. Gallagher attempting to restrain § 87(2)(b) who is behind him. § 87(2)(b) screams, "Get the fuck off me" multiple times. At 00:07, an object is thrown from the right side of the screen and hits the left side of Capt. Gallagher's face. At 00:08, Capt. Gallagher puts his hand to his head and looks down. Capt. Gallagher attempts to hold § 87(2)(b) back but is unable to do so. Protesters continue to yell, "Let him go!" The video ends abruptly at 00:18.

NYPD Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise to protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In determining whether the use of force is reasonable, members of the service should consider various factors such as the actions taken by the subject (Board Review 09).

It is undisputed that § 87(2)(b) threw an object at Capt. Gallagher and that Capt. Gallagher attempted to place § 87(2)(b) under arrest as a result. § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 12).
- Capt. Gallagher has been a member-of-service for 20 years and has been a subject in two CCRB complaints and two allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- On August 14, 2020, a Notice of Claim FOIL request was sent to the New York City Comptroller's office. This will be added to the case file upon receipt.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 13).

Squad No.: 4

Investigator:	<u>Charis Jones</u> Signature	<u>Investigator Charis Jones</u> Print Title & Name	<u>February 24, 2022</u> Date
Squad Leader:	<u>Raquel Velasquez</u> Signature	<u>IM Raquel Velasquez</u> Print Title & Name	<u>February 24, 2022</u> Date
Reviewer:	Signature	Print Title & Name	Date